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PILLSBURY CENTER SOUTH
220 SOUTH SIXTH STREET
MINNEAPOLIS, MINNESOTA 55402-1498
TELEPHONE: (612) 340-2600
FAX: (612) 340-2868
www.dorseylaw.com

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FAX COVER SHEET

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TO: **Mary McAuliffe** FAX #: 886-7160 ~~312-886-0747~~

FIRM NAME: **U.S. Environmental Protection Agency** TELEPHONE #: **312-886-6237**

FROM: **Wilda Wahpepah** FAX #: **(612) 340-2807**

TELEPHONE #: **(612) 340-8828** EMAIL: **wahpepah.wilda@dorseylaw.com**

COMMENTS:

Re Metropolitan Council SEP

Originator's Signature

Original will be sent via: [X] Mail [ ] Messenger [ ] Air Courier [ ] Will not be sent

PLEASE CONTACT Glenda Elder AT (612) 340-2503

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SUITE 1500
50 SOUTH SIXTH STREET
MINNEAPOLIS, MINNESOTA 55402-1498
TELEPHONE: (612) 340-2600
FAX: (612) 340-2868
www.dorseylaw.com

ROBERT E. CATTANACH
Partner
(612) 340-2873
FAX (612) 340-8800
cattanach.robert@dorseylaw.com

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November 5, 2001

VIA FACSIMILE AND OVERNIGHT DELIVERY

Mary T. McAuliffe, Esq.
Environmental Protection Agency Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3507

Re: Metropolitan Council Supplemental Environmental Project

Dear Mary:

We appreciate the opportunity to respond to comments and to explain in more detail all of the reasons why the Metropolitan Council's (the "Council") proposed modifications to improve upon the existing Supplemental Environmental Project ("SEP"), already approved by the District Court as Appendix C to the Consent Decree, meets the standard for an appropriate and environmentally beneficial project.

Additional Environmental Benefits from Revised SEP

First, we believe there is no dispute that the proposed modification in the SEP, the matter which is really at issue here, provides additional environmental benefits beyond the already approved SEP. The SEP as revised will provide significantly enhanced mercury reduction from the Metropolitan Wastewater Treatment Plant ("Metro Plant"). Specifically, the proposed alternative technology uses fabric filters in the air pollution control train of the fluidized bed incinerators. These will significantly increase the reduction of mercury. Preceded by carbon injection, fabric filters should provide up to 90 percent mercury removal, compared with 70 percent for the dry Electrostatic Precipitation ("ESP") technology currently approved as the SEP. Moreover, these fabric filters provide at least the same and probably even slightly better particulate removal capability as the replaced dry ESP technology, which was estimated to result in a reduction of approximately 3.5 tons of PM/PM-10 per year beyond what is required by regulation to meet emission limitations. The fabric filters perform better because they are less

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sensitive to fluctuations in gas stream conditions, variations in particle size or variations in physical parameters, such as the resistivity of particulate matter.

The comments received in response to the proposed change in SEP do not challenge these conclusions. Mr. Greenwood's comments do not address the change in technology at all. Rather, they raise the same issues as he raised in his original comments on the Consent Decree, namely, that he believes the Council should not use fluidized bed technology at all but should modify the multiple hearth incinerators. This issue was fully addressed in response to his original comments and is not relevant to the proposed action in this matter. Mr. Greenwood makes no suggestion that use of fabric filters as an alternative to dry ESP would be less environmentally beneficial.

The comments of the All for the Earth organization with regard to this issue indicate a misunderstanding of the proposed action. This organization states: "The removal of the dry ESP provides less mercury reductions and environmental protections and are not in the public interest." The proposed SEP change does not remove dry ESP technology without doing anything in the alternative. On the contrary, the proposed change in the SEP would substitute fabric filter technology for dry ESP technology and will actually provide greater mercury reduction and as good or better particulate removal. Most of the remaining comments by the All for the Earth organization address that organization's belief that yet another alternative solids processing technology should be used at the Metro Plant, namely, land application of sludge rather than incineration and beneficial reuse. To the extent that this might have been a legitimate issue in response to the original Consent Decree notice, it should have been raised in the original comment period, as was done by Mr. Greenwood. It is not relevant to the current matter, which simply concerns a change in the proposed SEP for the project.

While raising other objections, the organization Earth Protector, Inc. does not question the advantages of using fabric filter technology rather than dry ESP technology. In fact, the organization explicitly states that "Earth Protector does not object to the use of fabric filter in place of the ESP." (We note that this organization does not raise an objection to the use of fluidized bed technology.)

The SEP Project is not necessary to meet permit requirements

Although this issue was not raised by the commenters, we understand that some concerns have been raised within EPA about whether the previously approved dry ESP technology, or its proposed fabric filter replacement, are necessary to meet regulatory requirements. In evaluating the pollution control train needs for a fluidized bed incinerator, the Council's engineers determined that a venturi scrubber along with wet ESP technology would be sufficient to meet all existing regulatory requirements. During those evaluations, the Council also considered the

effects of adding additional removal capacity through the use of dry ESP technology. However, the use of dry ESP technology was always considered in the context of going above and beyond regulatory requirements. Correspondence and attachments from the Council's consultant, CH2MHill, written contemporaneously with the Settlement Conference of October 1999, clearly show that use of dry ESP technology was not necessary to meet regulatory standards.[1] See Attachment 1 (CH2MHill Letter of October 15, 1999). Consequently, use of dry ESP was never a legal requirement but rather was simply an option the Council might, or might not, decide to pursue. Likewise, the use of fabric filter technology as a substitute for dry ESP technology would not be a legal requirement except as a SEP commitment in the Consent Decree.

Commitment to SEP Project

Finally, we are very concerned about statements in the comments from All for the Earth and Earth Protector, Inc. that both the original and proposed substitute SEP are not eligible for SEP status because the dry ESP technology was, in some manner, "committed to" prior to the Council's commitment to the SEP in the Consent Decree. Mr. Davis' suggestion the Council had "previously agreed" to install the dry ESP in January 1999 is simply not correct.

It is important to keep in mind that the Council was never required, obligated or committed to the projects in the original or revised SEP by any federal, state, or local law, regulation, requirement, injunctive order, or other existing settlement or decree. In evaluating the solids processing needs of the Metro Plant, the Council studied a range of options including: upgrade of the existing multiple hearth incinerators, replacement of existing incinerators with fluidized bed incinerators, and land application of sludge rather than incineration. The ultimate option to be chosen was widely discussed and controversial. The comments received in response to the original Consent Decree and this proposed modification, which continue to urge different options ranging from upgrade of the existing incinerators to the use of land application, show that this was and continues to be an issue of considerable concern to some members of the public.

To be perfectly clear, the Council was neither committed to nor required by law to install fluidized bed incinerators, let alone any particular pollution control train for such a facility, when the EPA issued its notice of violation for the plant in July 1997. The Council first evaluated the use of fluidized bed incinerators (among other alternatives) at the Metro Plant in its Master Plan, completed in June 1997. In fact, Council staff continued to evaluate and re-evaluate the concept of fluidized bed incinerators through December 1998. After analysis of various options for addressing the plant's solids-processing needs, Council staff in 1999 recommended the selection

[1] The wet ESP, in contrast, was necessary complement to the fluidized bed incinerator.

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of fluidized bed incinerator technology and received initial design authorization from the Council governing board. Council staff directed its engineer for the initial design to include the best available technology for air pollution control with the understanding that this was going beyond the regulatory requirements.

As part of the process that the Council uses for major projects such as the Metro Plant solids processing project, the staff submitted a permit application in order to assure that the project in the form recommended by the staff, if ultimately approved by the Council governing board, would also meet with approval from the regulators, and could proceed relatively promptly. In accordance with the engineering recommendations, that submittal proposed the use of fluidized bed incinerators using venturi scrubbers, along with wet ESP technology. It also included the use of dry ESP technology, which went beyond regulatory requirements. The permit amendment application that the Council submitted to the Minnesota Pollution Control Agency in January 1999 reflects the alternative under consideration as of that date; it does not represent any type of obligation or commitment. Notably, the final air permit application was not submitted until March 2001 and could have been changed if the Council had not committed to dry ESP in the Consent Decree. At no time prior to October 1999 had the Council governing board made the final decision to proceed with construction of the fluidized bed technology.

As part of the settlement process, the EPA required the Council to demonstrate that construction and installation of new fluidized bed incinerators was a legitimate alternative that would address the concerns that the EPA had raised about the existing multiple hearth incinerators. The complete absence of any formal commitment to the fluidized bed incinerator project until it became part of the Council's settlement with EPA is not a mere technicality. As a government entity, the Council's administrative staff operates within a decisional framework that requires the Council governing board itself to approve projects under well-established formal procedures. The staff explores, evaluates and proposes a variety of projects, but always subject to final approval and funding by the governing board. Such approval is not a foregone conclusion. It is not uncommon for projects in various stages of implementation to be modified or discontinued completely due to a shift in priorities or cost-cutting mandates.

In fact, approval of the fluidized bed incinerator project took place in the context of an effort in the Wastewater Services unit to reduce capital costs by ten percent. The fluidized bed incinerator project was one of those projects targeted for possible cost reduction, and a potential cost reduction measure would have been removal of the dry ESP technology, which was not required for regulatory compliance. Several major projects were, in fact, deferred in order to meet the ten percent reduction goal.

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The EPA and Council staff did not agree on use of fluidized bed incinerators as a resolution to the dispute until the conclusion of the Settlement Conference on October 5, 1999. The Council's governing board had not previously made any commitment to construct the fluidized bed incinerators, and committed to the construction of incinerator project only as part of the settlement. Similarly, the Council was evaluating the option of adding dry ESP technology at the plant to improve emission reduction beyond regulatory requirements but had not committed to that addition. The use of dry ESP technology also was plainly subject to final approval of the Council governing board, and most importantly, not immune from the 10 percent capital costs reduction effort in the Wastewater Services unit . Until final and formal approval by the Council governing board, the dry ESP was not an obligation or commitment. As the contemporaneous correspondence from CH2MHill shows, the dry ESP was not considered a part of the incinerator compliance measure, nor was it necessary to meet regulatory standards.

Legal Standards for SEP Projects

The definition and key characteristics of a SEP are defined in the agency's Supplemental Environmental Projects Policy as:

> *environmentally beneficial projects* that a respondent agrees to undertake *in settlement of an enforcement action* but which the respondent is *not otherwise legally required to perform.*

See Attachment 2 (SEP Policy of May 1, 1998) (emphasis added).

The SEP Policy breaks down the three standards for evaluating the eligibility of a project:

1. Environmentally Beneficial: a project is environmentally beneficial if it improves, protects or reduces risks to public health or the environment at large;

2. In Settlement of An Enforcement Action: a project is in settlement of an enforcement action if the EPA has the opportunity to help shape the scope of the project and the project is not commenced until after the EPA has identified a violation;

3. Not Otherwise Legally Required To Perform: a project is not otherwise legally required if it is not required by any federal, state, or local law or regulation. SEPs cannot include: (1) actions the respondent is likely to be required to perform as injunctive relief in the instant case; (2) injunctive relief in another legal action the EPA or other regulatory agency could bring; (3) part of an existing settlement or order in another legal action; or (4) required by state or

local requirements. EPA guidance also states that if a project is something that "the company would do anyway" it would provide no supplemental or additional benefit to the environment.

See Attachment 2 at 5-6; Attachment 3 at 4 (SEP Policy Q&A of January 1999).

Both the SEP as originally proposed and approved by EPA, as well as the recent modification proposed by the Council and evaluated by the EPA, meet these standards. First, the Council already has demonstrated to EPA that adding dry electrostatic precipitators to the fluidized bed incinerators will provide an environmental benefit to the public because of enhanced particulate removal. Substituting fabric filter technology for the dry ESP will result in even greater benefits, particularly an increased reduction of mercury. See Attachment 4 (CH2MHill Letter of March 7, 2001).

Second, the dry ESP (as well as the proposed modified SEP) was in settlement of an enforcement action. The chronology of the project development shows that the EPA had the opportunity to shape the scope of the project because the Council had not committed to undertake the dry ESP project or commenced work on it before the notice of violation issued and negotiations ensued. Although the project was identified in planning documents and the initial permit amendment application, it was not something that the Council "would do anyway" because the dry ESP was not necessary to meet regulatory standards, and was clearly threatened by the ten percent cost reduction to which the fluidized bed incinerator project was potentially subject.

Finally, neither the dry ESP nor the proposed modification were required by any state, federal or local laws, regulations or requirements, injunctive orders, or other settlements or decrees. Moreover, neither project was likely to be required because neither was a necessary component of the fluidized bed incinerators. Based on the worst case calculations of its technical consultants, the Council was confident that the fluidized bed incinerators using venturi scrubbers along with wet ESP technology would meet all applicable emission limits.

Because the dry ESP was not required to achieve compliance, offered an enhanced particulate removal, and provided the required nexus with the objectives of the Clean Air Act, the EPA properly accepted the project as a SEP. The same holds true for the proposed modification. The Council has proceeded in accordance with the Consent Decree and only suggested the modification to the SEP when it became apparent that substitution of technology could achieve an even greater environmental benefit.

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In closing, we know that EPA is aware that the Council has contractual commitments that require a resolution of the use of substitute technology by November 10. The Council would like to proceed with the substitution of technology rather than revert to the original SEP, provided the parties can agree on a timeline for resolution. We look forward to discussing this with you further in our telephone conference on Monday, November 5.

Sincerely,

Robert E. Cattanach

Attachments
cc: Mark Thompson, Esq.
Randall Stone, Esq
Rebecca Flood
William Moore
Erik Hardin

CH2M HILL
1380 Corporate Center Curve
Suite 200
Eagan, MN
55121-1200
Tel 651.688.8100
Fax 651.688.8844

October 15, 1999

Mr. Bill Moore
General Manager
MCES
Mears Park Centre
230 East Fifth Street
St. Paul, MN 55101-1633

Subject: MWWTP Solids Processing Improvements Project
MCES Project No. 970300

Dear Bill:

As we have discussed, to meet anticipated regulatory emissions required to allow the planned MWWTP Solids Processing Improvements Project (Project) to be permitted, a base air pollution control train comprised of a wet scrubber followed by a wet electrostatic precipitator (WESP) is required for removing particulate matter (both PM and PM10) from the flue gasses emitted from the fluidized bed incinerators. The wet scrubber will primarily remove acid gasses while the WESP will remove particulate matter and heavy metals that exist as condensible oxides and salts. However, MCES currently plans to include a dry electrostatic precipitator (ESP) ahead of the wet scrubber and WESP which will provide enhanced particulate removal. Projected emissions of particulate matter (both PM and PM10) are shown on the attached table and the approach used for developing those projections is described on the following two pages.

The additional capital cost to MCES for providing enhanced particulate removal obtained by adding the ESP to the APC train is approximately $4.9M (estimated in 1998 dollars).

In addition, as you are aware, MCES's ability to implement the Project by mid-2004 and decommission the existing Multiple Hearth Incinerators is dependent upon regulatory approval of the Facility Plan and the Air Emission Permit Amendment in early 2000. For your information, attached is an overall schedule for implementing the schedule (with supporting detail schedules) that identifies the required approval dates.

If you have any questions relative to this information, please give me a call.

Attachment
1

Sincerely,

CH2M HILL

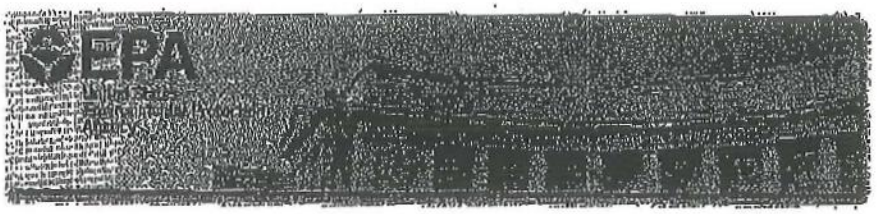
Dave Raby
Project Manager

MSP\Document2
c: Mr. Bryce Pickart

Fluidized Bed Incinerator (FBI)
PM/PM_{10} Emissions Performance Comparison

Pollutant	NSPS Subpart O (lb/dry ton)	PM_{10} SIP (lb/dry ton)	Baseline Expected Emissions (lb/dry ton)	Supplemental Environmental Project Expected Emissions (lb/dry ton)
PM	1.3		0.46	0.28
PM_{10}	—	1.2	0.46	0.28

The baseline air pollution control equipment wet scrubber and wet electrostatic precipitator will meet current NSPS and PM_{10} SIP performance criteria. The addition of a dry electrostatic precipitator will further decrease the expected emissions by 40 percent compared to the baseline air pollution control equipment.



EPA SUPPLEMENTAL ENVIRONMENTAL PROJECTS POLICY

Effective May 1, 1998

A. INTRODUCTION

1. Background

In settlements of environmental enforcement cases, the U.S. Environmental Protection Agency (EPA) requires the alleged violators to achieve and maintain compliance with Federal environmental laws and regulations and to pay a civil penalty. To further EPA's goals to protect and enhance public health and the environment, in certain instances environmentally beneficial projects, or Supplemental Environmental Projects (SEPs), may be part of the settlement. This Policy sets forth the types of projects that are permissible as SEPs, the penalty mitigation appropriate for a particular SEP, and the terms and conditions under which they may become part of a settlement. The primary purpose of this Policy is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by this Policy.

In settling enforcement actions, EPA requires alleged violators to promptly cease the violations and, to the extent feasible, remediate any harm caused by the violations. EPA also seeks substantial monetary penalties in order to deter noncompliance. Without penalties, regulated entities would have an incentive to delay compliance until they are caught and ordered to comply. Penalties promote environmental compliance and help protect public health by deterring future violations by the same violator and deterring violations by other members of the regulated community. Penalties help ensure a national level playing field by ensuring that violators do not obtain an unfair economic advantage over their competitors who made the necessary expenditures to comply on time. Penalties also encourage regulated entities to adopt pollution prevention and recycling techniques in order to minimize their pollutant discharges and reduce their potential liabilities.

Statutes administered by EPA generally contain penalty assessment

Attachment

This is a settlement Policy and thus is not intended for use by EPA, defendants, respondents, courts or administrative law judges at a hearing or in a trial. Further, whether the Agency decides to accept a proposed SEP as part of a settlement, and the amount of any penalty mitigation that may be given for a particular SEP, is purely within EPA's discretion. Even though a project appears to satisfy all of the provisions of this Policy, EPA may decide, for one or more reasons, that a SEP is not appropriate (e.g., the cost of reviewing a SEP proposal is excessive, the oversight costs of the SEP may be too high, the defendant/respondent may not have the ability or reliability to complete the proposed SEP, or the deterrent value of the higher penalty amount outweighs the benefits of the proposed SEP).

This Policy establishes a framework for EPA to use in exercising its enforcement discretion in determining appropriate settlements. In some cases, application of this Policy may not be appropriate, in whole or part. In such cases, the litigation team may, with the advance approval of Headquarters, use an alternative or modified approach.

B. DEFINITION AND KEY CHARACTERISTICS OF A SEP

Supplemental environmental projects are defined as **environmentally beneficial projects** which a defendant/respondent agrees to undertake **in settlement of an enforcement action,** but which the defendant/respondent is **not otherwise legally required to perform.** The three bolded key parts of this definition are elaborated below.

"Environmentally beneficial" means a SEP must improve, protect, or reduce risks to public health, or the environment at large. While in some cases a SEP may provide the alleged violator with certain benefits, there must be no doubt that the project primarily benefits the public health or the environment.

"In settlement of an enforcement action" means: 1) EPA has the opportunity to help shape the scope of the project before it is implemented; and 2) the project is not commenced until after the Agency has identified a violation (e.g., issued a notice of violation, administrative order, or complaint).[2]

"Not otherwise legally required to perform means" the project or activity is not required by any federal, state or local law or regulation. Further, SEPs cannot include actions which the defendant/respondent is likely to be required to perform:

(a) as injunctive relief[3] in the instant case;

(b) as injunctive relief in another legal action EPA, or another regulatory agency could bring;

(c) as part of an existing settlement or order in another legal action; or,

(d) by a state or local requirement.

SEPs may include activities which the defendant/respondent will become legally obligated to undertake two or more years in the future, if the project will result in the facility coming into compliance earlier than the deadline. Such "accelerated compliance" projects are not allowable, however, if the regulation or statute provides a benefit (e.g., a higher emission limit) to the defendant/respondent for early compliance.

Also, the performance of a SEP reduces neither the stringency nor timeliness requirements of Federal environmental statutes and regulations. Of course, performance of a SEP does not alter the defendant/respondent's obligation to remedy a violation expeditiously and return to compliance.

C. LEGAL GUIDELINES

EPA has broad discretion to settle cases, including the discretion to include SEPs as an appropriate part of the settlement. The legal evaluation of whether a proposed SEP is within EPA's authority and consistent with all statutory and Constitutional requirements may be a complex task. Accordingly, this Policy uses five legal guidelines to ensure that our SEPs are within the Agency's and a federal court's authority, and do not run afoul of any Constitutional or statutory requirements.[4]

1. A project cannot be inconsistent with any provision of the underlying statutes.

2. All projects must advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action and must have adequate nexus. Nexus is the relationship between the violation and the proposed project. This relationship exists only if:

a. the project is designed to reduce the likelihood that similar violations will occur in the future; or

b. the project reduces the adverse impact to public health or the environment to which the violation at issue contributes; or

c. the project reduces the overall risk to public health or the

environment potentially affected by the violation at issue.

Nexus is easier to establish if the primary impact of the project is at the site where the alleged violation occurred or at a different site in the same ecosystem or within the immediate geographic[5] area. Such SEPs may have sufficient nexus even if the SEP addresses a different pollutant in a different medium. In limited cases, nexus may exist even though a project will involve activities outside of the United States.[6] The cost of a project is not relevant to whether there is adequate nexus.

3. EPA may not play any role in managing or controlling funds that may be set aside or escrowed for performance of a SEP. Nor may EPA retain authority to manage or administer the SEP. EPA may, of course, perform oversight to ensure that a project is implemented pursuant to the provisions of the settlement and have legal recourse if the SEP is not adequately performed.

4. The type and scope of each project are defined in the signed settlement agreement. This means the "what, where and when" of a project are defined by the settlement agreement. Settlements in which the defendant/respondent agrees to spend a certain sum of money on a project(s) to be defined later (after EPA or the Department of Justice signs the settlement agreement) are not allowed.

5. a. A project cannot be used to satisfy EPA's statutory obligation or another federal agency's obligation to perform a particular activity. Conversely, if a federal statute prohibits the expenditure of federal resources on a particular activity, EPA cannot consider projects that would appear to circumvent that prohibition

b. A project may not provide EPA or any federal agency with additional resources to perform a particular activity for which Congress has specifically appropriated funds. A project may not provide EPA with additional resources to perform a particular activity for which Congress has earmarked funds in an appropriations committee report.[7] Further, a project cannot be used to satisfy EPA's statutory or earmark obligation, or another federal agency's statutory obligation, to spend funds on a particular activity. A project, however, may be related to a particular activity for which Congress has specifically appropriated or earmarked funds.

c. A project may not provide additional resources to support specific activities performed by EPA employees or EPA contractors. For example, if EPA has developed a brochure to help a segment of the regulated community comply with environmental requirements, a project may not directly, or indirectly, provide additional resources to revise, copy or distribute the brochure.

d. A project may not provide a federal grantee with additional funds to perform a specific task identified within an assistance agreement.

D. CATEGORIES OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS

EPA has identified seven specific categories of projects which may qualify as SEPs. In order for a proposed project to be accepted as a SEP, it must satisfy the requirements of at least one category plus all the other requirements established in this Policy.

1. Public Health

A public health project provides diagnostic, preventative and/or remedial components of human health care which is related to the actual or potential damage to human health caused by the violation. This may include epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/ tissue samples, medical treatment and rehabilitation therapy.

Public health SEPs are acceptable only where the primary benefit of the project is the population that was harmed or put at risk by the violations.

2. Pollution Prevention

A pollution prevention project is one which reduces the generation of pollution through "source reduction," i.e., any practice which reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment, prior to recycling, treatment or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

Source reduction may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water or other materials. "In-process recycling," wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

In all cases, for a project to meet the definition of pollution

EPA'S SUPPLEMENTAL ENVIRONMENTAL PROJECTS POLICY

Questions and Answers for the Practitioner

January 1999

A. Nature of the Policy

1. Q. *What is the Supplemental Environmental Projects (SEP) Policy?*

   A. EPA's SEP Policy encourages the use of environmentally beneficial projects as part of the settlement of an enforcement action. Through SEPs, the settlement of an enforcement action can result in environmental and public health protections beyond that specifically required by law.

   The SEP Policy provides criteria to guide when and how SEPs may be included as part of a settlement.

2. Q. *How do SEPs relate to penalties?*

   A. SEPs do not replace or substitute for penalty dollars. In all enforcement actions, EPA seeks to obtain an appropriate penalty considering a variety of factors, such as the economic benefit gained by the violator and the seriousness of the violation. EPA also considers a defendant's commitment and ability to perform a SEP as a relevant factor in establishing an appropriate penalty. The final settlement penalty generally will be lower for a violator who agrees to perform an acceptable SEP compared to a violator who does not agree to perform a SEP.

3. Q. *How does the SEP Policy promote the Agency's program goals?*

   A. SEPs can secure environmental or public health protection and improvements in addition to those achieved by compliance with applicable laws. SEPs can also further Agency goals such as pollution prevention and environmental justice. For example,

Attachment 3

about the SEP Policy. However, it would be inappropriate for the Agency to pressure a defendant to undertake a SEP.

4. Q. *Can I use a SEP to mitigate the stipulated penalties?*

A. Only in extraordinary circumstances. Stipulated penalties provide a significant incentive for compliance with the consent agreement. If a violator cannot honor the terms of the consent agreement, there may be little reason to believe the violator capable of honoring the commitment to perform a SEP. However, in some circumstances the violator may be able to demonstrate its ability and intention to perform a SEP, and the reasons for noncompliance with the agreement may be such that performance of a SEP would not undermine the deterrent purposes of stipulated penalties. Even under these circumstances, the settlement agreement must have established stipulated penalty liability as a range of possible values for the violations at issue. Ranges for stipulated penalties, however, can diminish the deterrence value, and so should be used with discretion.

C. Definition and Characteristics of a SEP

Environmentally Beneficial

1. Q. *The defendant wants to purchase computers and set them up in a local library to provide community access to environmental Internet sites. Is this an acceptable SEP?*

A. No. This project provides no direct benefit to public health or the environment. Greater access to technology may be of some indirect benefit to the environment or public health by increasing community access to government processes such as permitting decisions. However, such benefit is too tenuous to provide any quantifiable value for which we could provide SEP credit.

In Settlement of an Enforcement Action

2. Q. *At the time of the inspection, Company Z had been working on developing a new process design that would eliminate 20% of its waste stream. Company Z proposes to implement its new design for SEP credit. Would this be considered a project done "in settlement of an enforcement action?"*

A. No. This project was contemplated by the company prior to the enforcement action. It is something that the company would do anyway, and therefore no additional benefit to the environment would be achieved by providing SEP credit for the project.

3. Q. *The defendant wants to perform a SEP that would allow a non-profit organization to continue its environmental assessment work. Apart from any other provisions of the SEP Policy that might apply, would this be a SEP done in "settlement of an enforcement action"?*

A. Not if the money was being used to extend the existing work. Under that circumstance, the activity would be done without the incentive of the enforcement action. The Agency would achieve no additional benefit to the environment by providing SEP credit for this project. If the money was going to perform a new, different assessment, then it may be appropriate.

Not Otherwise Legally Required to Perform (or likely to be required to perform as injunctive relief)

4 Q *Defendant G will become subject to stricter air emissions standards in three years. It proposes a SEP that will bring it into compliance with the new air standards in two years. Is this an acceptable SEP?*

A. No. The SEP Policy states that it is appropriate to provide SEP credit for accelerated performance if it will result in compliance two or more years earlier than legally required. Under the above scenario, compliance is accelerated only by one year. Because the value of accelerated compliance is only the cost attributable to doing the project earlier (not the cost the project as a whole) the value of accelerated compliance only becomes significant when longer time frames are involved.

CH2MHILL

March 7, 2001

Mr. Harold Voth
Metropolitan Council Environmental Services
Metro Plant Engineering
2450 Childs Road
St. Paul, MN 55106

Subject: Replacement of Dry ESP with Fabric Filter

Dear Mr. Voth:

CH2M HILL has reviewed and concurs with the Von Roll recommendation to replace the dry electrostatic precipitator (ESP) with a fabric filter in the fluidized bed incinerator and air pollution control trains. The fabric filter technology would be an enhancement to the MCES voluntary mercury reduction program while maintaining an equivalent level of particulate removal capability.

The EPA-CICA Fact Sheets list the design particulate removal efficiency for pulse-jet cleaned fabric filters and wire-plate dry ESPs to be 99 to 99.9 percent for both technologies. The fabric filter should actually result in slightly better particulate removal efficiencies because it is less sensitive to fluctuations in gas stream conditions, variations in particle size or variations in physical parameters, such as resistivity of the particulate matter. The main benefit of the fabric filter is the potential for increased mercury removal efficiency when combined with upstream carbon injection. Carbon injection followed by a dry ESP requires that mercury adsorption onto carbon particles occurs in a reaction chamber. The electrostatically charged carbon particles are then collected and removed in the dry ESP. In the fabric filter, however, mercury adsorption can occur in both the reaction chamber and on the fabric filter. A layer of carbon will develop on the fabric filter surface and improve the adsorption efficiency between the carbon and the mercury.

We believe carbon injection followed by a dry ESP will provide up to 70 percent mercury removal efficiency, whereas carbon injection followed by a fabric filter should be able to achieve up to 90 percent mercury removal.

Attachment
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Comparable building space will be required for each of the two processes and we expect the capital costs for each system to be approximately equal.

If you have any questions please feel free to contact us.

Sincerely,

CH2M HILL

John Borghesi

John Borghesi, P.E.